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OFFICE OF PETITIONS

In re Patent No. 7,056,935	:	
STEINER et al.	:	LETTER REGARDING PATENT
Issue Date: June 6, 2006	:	TERM ADJUSTMENT AND
Application No. 09/805,249	:	NOTICE OF INTENT TO ISSUE
Filed: March 14, 2001	:	CERTIFICATE OF CORRECTION
Attorney Docket No. 054707-1276	:	

This letter is in response to the "COMMUNICATION REGARDING PATENT TERM ADJUSTMENT," filed August 7, 2006. Patentees request that the determination of patent term adjustment under 35 U.S.C. 154(b) be reviewed for accuracy.

The request for review of the determination of patent term adjustment (PTA) is GRANTED.

The patent term adjustment indicated in the patent is to be corrected by issuance of a certificate of correction showing a revised patent term adjustment of **420 days**.

On June 6, 2006, the above-identified application matured into U.S. Patent No. 7,056,935, with a revised patent term adjustment of 632 days. On August 7, 2006, patentees submitted the instant comment. Patentees state no basis for the request for review of the patent term adjustment.

A review of the application history reveals that the determination of patent term adjustment under 35 U.S.C. 154(b) of 632 days is incorrect.

Initially, the Office notes that the period of reduction of 90 days for filing an Information Disclosure Statement on December 30, 2002, was entered in error and is hereby removed. The Office further notes that the period of adjustment of 3 days associated with the mailing of a "NON-BONAFIDE RESPONSE TO SEQUENCE REQUEST" on February 4, 2003, was also entered in error and is hereby removed.

A review of the application history reveals that the Office mailed a Notice to File Missing Parts of Nonprovisional Application on April 23, 2001. Applicants filed a response on October 23, 2001, in excess of the three-month period from the mailing date of the Notice. See 37 CFR 1.704(b). Thus, applicants failed to engage in reasonable efforts to conclude prosecution of this application. The period of adjustment should have been reduced by 92 days, the number of days in the period beginning on the day after the date that is three months after the date of mailing of the Notice to File Missing Parts of Nonprovisional Application, July 24, 2001, ending on the date the reply was filed, October 23, 2001. See 37 CFR 1.704(b). Accordingly, an additional period of reduction of 92 days will be entered.

Additionally, a review of the record reveals that on July 11, 2002, the Office mailed a Notice to Comply with Requirements for Patent Applications Containing Nucleotide Sequence and/or Amino Acid Sequence Disclosures. On July 29, 2002, applicants filed a response. On September 10, 2002, the Office mailed a "Notice to Comply: Bonafide Letter" and a Notice to Comply with Requirements for Patent Applications Containing Nucleotide Sequence and/or Amino Acid Sequence Disclosures, advising applicants that that the response as filed on July 29, 2002, contained an omission. On October 1, 2002, applicants filed a response to the Notices. On February 4, 2003, the Office mailed a "Notice to Comply: Sequence Rules & Species Election (NONBONAFIDE)" and a Notice to Comply with Requirements for Patent Applications Containing Nucleotide Sequence and/or Amino Acid Sequence Disclosures, advising applicants that that the response as filed on October 1, 2002, contained an omission. On February 24, 2003, applicants filed a response to correct the omission in the previous reply.

Pursuant to 37 CFR 1.704(c)(7), the submission of a reply having an omission (§ 1.135(c)) is a failure to engage in reasonable efforts to conclude prosecution, and the period of adjustment set forth in 37 CFR 1.703 shall be reduced by the number of days, if any, beginning on the day after the date the reply having an omission was filed and ending on the date that the reply or other paper correcting the omission was filed.


It is undisputed that the sequence listings of July 29, 2002 and October 1, 2002, contained errors and that a sequence listing correcting the errors was not filed until February 24, 2003. Accordingly, the period of reduction pursuant to 37 CFR 1.704(c)(7) is 210 days, the number of days beginning on the day after the date that the reply having an omission was filed, July 30, 2002, and ending the date that the reply correcting the omission was filed, February 24, 2003. Thus, an additional period of reduction of 210 days is being entered.

In view thereof, the patent should have issued with a revised patent term adjustment of **420 days** (814 days of Office delay - 394 days (92 + 210 + 92) of applicant delay)

As this letter was submitted as an advisement to the Office of an error in patentees' favor, the Office will not assess the \$200.00 application fee under 37 CFR 1.18(e). The Office thanks patentees for their good faith and candor in bringing this to the attention of the Office.

The application file is being forwarded to the Certificates of Correction Branch for issuance of a certificate of correction in order to rectify this error. The Office will issue a certificate of correction indicating that the term of the above-identified patent is extended or adjusted by **420 days**.

Telephone inquiries specific to this matter should be directed to Christina Tartera Donnell, Senior Petitions Attorney, at (571) 272-3211.


Kery A. Fries
Senior Legal Advisor
Office of Patent Legal Administration

Enclosure: Copy of DRAFT Certificate of Correction

UNITED STATES PATENT AND TRADEMARK OFFICE
CERTIFICATE OF CORRECTION

PATENT : 7,056,935 B2

DATED : Jun. 6, 2006

INVENTOR(S) : Steiner et al.

It is certified that error appears in the above-identified patent and that said Letters Patent is hereby corrected as shown below:

On the cover page,

[*] Notice: Subject to any disclaimer, the term of this patent is extended or adjusted under 35 USC 154(b) by (632) days

Delete the phrase "by 632 days" and insert – by 420 days--